

Serial No.: 10/023,457

Docket No.: KCC-16588

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the following remarks. Currently, Claims 1-57 and 59 are pending, with Claim 58 having been previously canceled. Claim 59 has been allowed. With this Amendment, Applicants have amended Claims 1, 19, 36, 49 and 52 and canceled Claims 15-18, 33-35, 41-43, and 53-55. One new claim, Claim 60, has been added.

**Summary of Interview**

On 06 April 2005, Margaret M. Crosby and Examiner Stephens had a telephone interview. The 10 March 2005 Final Office Action and U.S. Patent 6,287,287 (Elsberg) were discussed. The differences between Elsberg and the instant Application, and the parts of the Office Action that mention "intended use" were discussed.

The Examiner and Margaret M. Crosby discussed other possible structural elements that could be used to distinguish Elsberg. For example, Column 15, lines 29-45, of Elsberg was discussed with respect to the passive side bonds of Elsberg being located inward of the primary fasteners.

Although no specific agreement was reached, Applicants offer the foregoing amendments and the following arguments.

**Amendments to the Claims**

Claim 1 has been amended to recite "wherein the at least one frangible bond is located outward of the fastening component and the mating fastening component." This amendment is supported in the Specification at Figure 10, page 15, lines 17-19, and page 41, lines 6-10.

Claim 19 has been amended to recite "An absorbent" garment in the preamble and delete 'A disposable' in order to make it consistent with the claims which depend from Claim 19. This amendment is support in the Specification as originally filed as well as by Claims 20-35 as originally filed. Claim 19 has also been amended to recite "wherein each frangible bond is located outward of each fastening component and each

KCC-2123

18

MMC/I

Serial No.: 10/023,457

Docket No.: KCC-16588

mating fastening component." This amendment is supported in the Specification at Figure 10, page 15, lines 17-19, and page 41, lines 6-10.

Claim 36 has been amended to recite "wherein each frangible bond is located outward of each mechanical fastening element." This amendment is supported in the Specification at Figures 13A and 14A, page 15, lines 17-19, and page 44, lines 11-18.

Claim 49 has been amended to rewrite it in independent form.

Claim 52 has been amended to recite "wherein each frangible bond is located outward of each mechanical fastening element." This amendment is supported in the Specification at Figures 13A and 14A, page 15, lines 17-19, and page 44, lines 11-18.

New Claim 60 has been added. This amendment is supported in the Specification at Figures 11, 13B and 14B, page 41, lines 11-12, and page 44, lines 18-20.

The following claims have been canceled: 15-18, 33-35, 41-43, and 53-55. Claim 58 had been previously canceled.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged.

#### Claim Rejections - 35 U.S.C. §102

The rejection of Claims 1-4, 8-21, 29-43, 46-48 and 52-57 (Claim 58 had been previously canceled) under 35 U.S.C. §102 as being anticipated by Elsberg (U.S. Patent No. 6,287,287) is respectfully traversed.

Elsberg discloses a prefastened disposable absorbent article including a pair of passive side bonds that help to maintain the absorbent article in a prefastened condition. (Col. 2, lines 40-46). The passive side bonds are located inward of the primary fasteners. (Col. 15, lines 29-45).

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Elsberg does not disclose each and every element or limitation of Applicants' claims, as amended.

With respect to Claims 1 and 19, the Examiner states on pages 3 and 7 of the Office Action that the "unfastened limitation" is directed to an intended use of the article and that an intended use must result in a structural difference.

KCC-2123

19

MMC/I

Serial No.: 10/023,457

Docket No.: KCC-16588

Claims 1 and 19, as amended, now recite the structural limitation that the frangible bond is outward of the fastening components. Elsberg does not disclose or suggest that the passive side bonds are outward of the primary or secondary fasteners.

The fastening system of Elsberg includes a pair of primary fasteners 62, a pair of secondary fasteners 64, a pair of passive side bonds 80 and 82 and an attachment panel 66. (Col. 5, lines 14-18; Col. 10, line 63 to Col. 17, line 61). The purpose of the passive side bonds is to "prevent movement and shifting of the waist regions 22 and 24 and ear regions 28 relative to each other for improved fit and performance." (Col. 15, lines 20-23).

The Elsberg passive side bonds are located *inward* of the primary fasteners 62 in order to prevent such moving and shifting. (Col. 15, lines 29-31. Emphasis added.). "In such a configuration, the passive side bonds 80 and 82 connect and stabilize the overlapped portion 84 of the back waist region 24 inward of the primary fasteners 62 to the front waist region 22." (Col. 15, lines 34-38). "As illustrated in FIG. 4, the passive side bonds 80 and 82 are located on the back waist region 24 inward from the primary fastener 62 a distance 86 to prevent the relative movement or shifting between the front and back waist regions 22 and 24 with respect to each other." In fact, Elsberg specifies that the further inward the passive side bonds are, the better. The overlapped portion 84 of the back waist region 24 defines and overlap distance 88. (Col. 15, lines 46-47; and Fig. 4). "The overlap distance 88 is important to ensure that a good seal is provided around the legs and waist of the wearer. Moreover, the greater the overlap distance 88, the further inward the passive side bonds 80 and 82 can be located which can provide improved reduction in the relative movement between the front and back waist regions 22 and 24 and improved hip coverage during use." (Col. 15, lines 50-56). Therefore, Elsberg did not even contemplate that the passive side bonds would be located outward of the primary fasteners, because doing so would defeat the purpose of the passive side bonds.

With respect to Claim 15, Claims 15-18 have been canceled.

With respect to Claims 36 and 52, Claims 36 and 52, as amended, now also recite the structural limitation that the frangible bond is outward of the mechanical

Serial No.: 10/023,457

Docket No.: KCC-16588

fastening element. As discussed above, Elsberg does not disclose or suggest that the passive side bonds are outward of the primary or secondary fasteners.

For at least the reasons presented above, Applicants respectfully submit that the Claims are not anticipated by Elsberg. Thus, Applicants respectfully request withdrawal of this rejection.

#### **Claim Rejections - 35 U.S.C. §103**

The rejection of Claims 5-7, 22-28, 44 and 45 under 35 U.S.C. §103(a) as being unpatentable over Elsberg (U.S. Patent No. 6,287,287) is respectfully traversed.

Claims 5-7, 22-28, 44 and 45 depend from Claims 1, 19 and 36. On page 13 of the Office Action, the Examiner states that Elsberg discloses the invention substantially as claimed, but is silent on the width of the frangible bonds and silent on the distance between the fastening components and the distal edges.

Applicants respectfully disagree that Elsberg discloses the invention substantially as claimed.

One of the factors in establishing a *prima facie* case of obviousness is that the prior art references, when combined, must teach or suggest all the claim limitations. As discussed above with respect to Claims 1, 19, and 36, Elsberg does not disclose all of the limitations of Claims 1, 19 or 36, as amended.

For at least the reasons presented above, Applicants respectfully submit that Claims 5-7, 22-28 44 and 45 are not rendered obvious by Elsberg. Thus, Applicants respectfully request withdrawal of this rejection.

Serial No.: 10/023,457

Docket No.: KCC-16588

**Allowable Subject Matter**

On page 13 of the Office Action, the Examiner indicated that Claim 59 is allowed.

The Examiner also indicated that Claims 49-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 49 has been amended to be rewritten in independent form. Claims 50-51 depend from Claim 49. Therefore, these claims should be also be allowable.

**Conclusion**

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Respectfully submitted,



Margaret M. Crosby  
Registration No. 40,969

Pauley Petersen & Erickson  
2800 West Higgins Road, Suite 365  
Hoffman Estates, Illinois 60195  
(847) 490-1400  
FAX (847) 490-1403

KCC-2123

22

MMC/I